

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JULY 2, 2003**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of July 2, 2003, was called to order by Mayor Hitchcock at 5:03 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

a) Actual litigation: Government Code §54956.9(a); one case; Kruppe v. City of Lodi, et al. U.S. District Court, Eastern District, Case No. CIV S-03-0196 LKK DAD

b) Actual litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M&P Investments, et al., United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM

C-3 ADJOURN TO CLOSED SESSION

At 5:03 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:05 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:09 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Hays disclosed the following actions.

In regard to Item C-2 (a), Council gave direction to the City Attorney's Office regarding the settlement proposal to be made in the case.

In regard to Item G2 (b), a motion by Council Member Hansen, seconded by Council Member Beckman, was made to reaffirm the authority of the City Attorney's Office (and attorneys working under that Office) to negotiate settlements, with the City Council being the final authority for approval; principle points in settlements being policy limits of insurance and recovery of response costs. The vote was 4-1 with Mayor Hitchcock dissenting.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of July 2, 2003, was called to order by Mayor Hitchcock at 7:09 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Steve Newman, First Baptist Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 (a) Police Chief Adams presented the following 2002 Police Awards:

<u>Citizen Service Commendation:</u>	Maria Benevides Maria Cervantes Mary Jo Douglas Robert Douglas James Mize
<u>Life Saving Citation:</u>	Brian Scott, Detective David Griffin, Police Officer Scott Powell, Detective
<u>Volunteer of the Year:</u>	Patricia Freeman, Police Partner
<u>Citizen Service Award:</u>	Paul Slater
<u>Chief's Award:</u>	Bud Shropshire Janette de Jong
<u>Meritorious Service:</u>	Dale Eubanks, Detective
<u>Officer of the Year:</u>	Terry Martin, Police Officer

D-2 (a) Mayor Hitchcock presented a proclamation to Tony Goehring, Parks and Recreation Director, proclaiming the month of July 2003 as "Parks and Recreation Month" in the City of Lodi.

D-2 (b) Mayor Hitchcock presented a proclamation to Jennifer Alberti, Recreation Supervisor, proclaiming the week of July 13 – 19, 2003, as "National Aquatic Week" in the City of Lodi.

D-3 (a) Mayor Hitchcock presented Certificates of Recognition to Boy Scouts Jacoby Wayne Veach and Curtis Woodrow Daniger for obtaining the rank of Eagle Scout.

D-3 (b) Winona Ellwein, Chair of the Senior Citizens Commission, introduced members that were present and reported that the Commission has published an updated version of the Senior Resource Manual, hosted a care givers event at Hutchins Street Square, and is currently working on a "Red Magnet" program with emergency care providers. Ongoing concerns of the Commission are the local nutrition program and lack of affordable senior housing in Lodi.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Beckman, Land second, unanimously approved the following items hereinafter set forth:

E-1 Claims were approved in the amount of \$2,469,708.36.

E-2 The minutes of June 4, 2003 (Regular Meeting), June 17, 2003 (Shirtsleeve Session), and June 18, 2003 (Regular Meeting) were approved as written.

E-3 Adopted Resolution No. 2003-109 to 1) reject the low bid in Category 1 (Wood Crossarms) for failure to meet bid requirements (bidder proposed a one-time delivery rather than a two-year supply agreement) and all bids in Category 6 (Underground Rubber Products) because of restrictive specifications in that category, 2) to award the Electric Utility Overhead and Underground Distribution Hardware Supply Contract for Fiscal Year 2003-05 to the evaluated low bidders meeting specifications in each of the Categories 1 through 5 of the two-year supply agreement for an estimated, two-year total amount of \$77,125.08, and 3) to authorize staff to re-advertise for certain items in the equipment list in Category 6, making specifications less restrictive to allow a more competitive bid environment.

- E-4 Adopted Resolution No. 2003-110 awarding the bid for 24,000 feet of #1/0 and 28,000 feet of #350kcmil 600-volt underground triplex to the low bidder in both categories, G.E. Supply Company, of North Highlands, in the amount of \$62,003.66.
- E-5 Adopted Resolution No. 2003-111 awarding the bid for the purchase of 224 Holophane *Prismasphere*® globe-style luminaires to the low bidder, Wille Electric Supply Company, of Stockton, in the amount of \$116,558.54.
- E-6 Adopted Resolution No. 2003-112 authorizing City departments to continue to purchase desktop and notebook computers, as budgeted through fiscal year 2005, in aggregate amounts of \$15,000 or less; purchases would be made from MPC Computers (Micron), Hewlett-Packard, or Dell Computers under State of California contracts awarded through the Multiple Award Schedule and through the Western States Contracting Alliance.
- E-7 Accepted improvements constructed under the "Wastewater Main Repair Project near Turner Road and California Street" contract.
- E-8 Accepted improvements under the "Municipal Service Center Compressed Natural Gas Fueling Station, 1331 South Ham Lane" contract.
- E-9 Adopted Resolution No. 2003-113 authorizing the City Manager or Public Works Director to sign and file, for and on behalf of the City, financial assistance applications from the State Water Resources Control Board for the White Slough Water Pollution Control Facility Improvements.
- E-10 Adopted Resolution No. 2003-114 dedicating a revenue source for repayment of a potential State Revolving Fund Loan for the White Slough Water Pollution Control Facility Improvements and agreeing to maintain the revenue source.
- E-11 Authorized funds from the Protocol Account for the City Council to host a reception honoring citizen volunteer service and retirements on various boards and commissions (approximately \$6,500 / \$23 per person).
- E-12 Set public hearing for July 16, 2003, to consider adopting a revised fee schedule for building permits.
- E-13 Set public hearing for August 6, 2003, to consider Reimbursement Agreement RA-03-01 establishing an area of benefit and reimbursable costs for developer-funded public improvements for 770 North Guild Avenue and a resolution establishing an area of benefit and reimbursable costs for City-funded improvements for the project at 770 North Guild Avenue.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Scott Rowell asked that his five minutes be ceded to Stephen Meyer.
- Lori Gualco stated that she was present on behalf of Guild Cleaners, Inc. and Jack Alquist who she has represented for the past ten years. She stated that the Council has been personally invited by the mediator to attend and participate in the mediation sessions; however, a vote was taken by Council not to attend the proceedings. She characterized recent events as a "witch hunt" for someone who is speaking out. There has been discussion regarding who has been spoiling the litigation strategy of the City, who Ms. Gualco believed was the City Attorney. She reported that on February 28, 2003, chief outside Counsel Michael Donovan admitted to the Federal District Court that the City of Lodi is a Potentially Responsible Party (PRP) because of the ownership, operation, and maintenance of its sewer system. Subsequently there was a motion for reconsideration that had been taken under submission by Judge Frank C. Damrell.

On March 31, 2003 Judge Damrell cited this as one of his bases to vacate the injunctive relief granted against Guild Cleaners. She believed that Council's decision not to participate in the mediation process is damaging to the City's litigation strategy. Ms. Gualco stated that she witnessed an incident in a public place at Hutchins Street Square where a profane statement was made about the Mayor. She noted that Council Member Land was also present. She asked that everyone in the lawsuit conduct themselves professionally and that the Council reconsider its vote and agree to participate in the mediation proceedings. Ms. Gualco reported that no attorneys from the Envision law group were present at last Friday's meeting; however, at 5:00 p.m. on that same day she was served with a box of documents and 11 new motions for summary adjudication filed against the defendants in this case, with 7 against her client.

In reply to Council Member Land, Ms. Gualco stated that she was independent counsel for Jack Alquist and Guild Cleaners, Inc. who have insurance policies that provide a defense. Her fees are paid on those insurance policies for which her client paid premiums. She reported that all of the coverage counsel who make decisions on this case, as well as representatives who handle the claims on behalf of the insurance companies, were present at the mediation proceeding.

Council Member Land replied that he was employed in the insurance industry for over 25 years and stated that insurance claim adjusters cannot make final settlement offers.

Mayor Pro Tempore Howard pointed out that Ms. Gualco misinformed the public by stating that the Council voted not to attend future mitigation meetings. She clarified that the motion pertained only to one specific meeting.

Ms. Gualco countered that the information regarding the vote had initially been reported by the Lodi News-Sentinel.

Council Member Hansen expressed his opinion that it was a desperate and bizarre act for attorneys representing one of the clients in this case to speak before the Council. He likened it to a "wolf in sheep's clothing" and a tactic to generate support from the public by skewing the facts. He believed it to be his job as a Council Member to listen and gather information, but not get involved in the mediation process.

Council Member Beckman stated that as a licensed attorney he understood the lawyer/client relationship. The State Bar clearly states, with no exception, that a lawyer representing a client shall not communicate to another client or another lawyer directly. He pointed out that Ms. Gualco is a lawyer representing a client in litigation and having direct communication with another client who is represented in the litigation. State Bar regulations require that Ms. Gualco direct her communications to City Attorney Hays, not the City Council. Because the Council is an elected body, Ms. Gualco is able to skirt State Bar regulations. He stated that if Council were not an elected body Ms. Gualco could be disbarred for her actions this evening. He believed that Ms. Gualco was abusing democracy and open meeting laws.

Ms. Gualco noted that she has been a licensed member of the California State Bar and a litigator for 23 years. She advised Council Member Beckman to read the law on public agencies and the right of citizens and their attorneys to petition public officials. She recommended that he not make such statements in an open forum, as he could subject himself to penalties. Ms. Gualco stated that the reason she and Mr. Meyer are addressing public officials is to try and get a resolution of the lawsuit, which has cost the City over \$20 million.

- Stephen Meyer stated that Mayor Hitchcock has been criticized for asking questions that the mayor of any city would ask who had at risk the amount of money Lodi has at risk in this case. He suggested that Council may wish to pursue the following inquiries:
 - How much have you borrowed, and how much do you owe? Mr. Meyer stated that Lodi has borrowed and owes Lehman Brothers \$21 million. Lodi has borrowed \$6 million from the City water fund. In addition it owes attorneys an amount of money that has yet to be disclosed; however, the lawyers have a cap on their fees. He estimated that the City owes its lawyers an additional \$2 million to \$4 million at an interest rate of 12% per annum. In total, the City is at risk for \$30 million.

- Is the financing with Lehman Brothers truly non-recourse? He noted that through the financing, Lodi raised \$16 million and is paying an interest rate of 25% per annum. Mr. Meyer stated that he had recently received documentation from Lehman Brothers in which they were raising questions. He warned that Lodi is dealing with a sophisticated lender who has loaned a large sum of money and it is foolish to think there is no liability if the City does not recover. If Lodi does not pay the \$22 million currently owed in Certificates of Participation (which will increase by 50% in two years) then the City's bond rating will be impacted. Mr. Meyer believed that the financing is standing in the way of a resolution to this case. He reported that last Friday Judge Damrell issued a decision where he released the Lehman Brothers financing documents and stated that the business transaction between Lehman Brothers and Lodi to fund environmental litigation for profit could undermine the efficient and effective remediation because the investment bank does not seek to remediate; it seeks to recover its investment and make an extraordinary profit. Sound policy counsels against such financial arrangements, which conflict with the goal of cleaning up environmental contamination. Mr. Meyer stated that Lodi was similarly criticized by the Ninth Circuit Court.
- Why would the City prefer cash to work? Mr. Meyer stated that the answer is found in the financing agreement. If the City accepts a non-cash settlement when any certificates are outstanding, the City must deposit in the recovery account, as program receipts, from any available fund in amounts sufficient to pay certificates with a value equivalent to an I-cash settlement. Mr. Meyer explained that, in other words, if a party comes forward and agrees to do \$10 million worth of work, the City needs to come up with \$10 million out of its general fund. If money is paid, Lehman Brothers will take \$22 million and lawyers will take 20% of any cash recoveries. Consequently, the City will have to get \$28 million to \$30 million before it begins putting money into the ground for cleanup. Mr. Meyer reported that in a letter from the City Attorney to Lehman Brothers dated January 12, it stated that the City made a policy choice for cash settlements. The recovery of attorney's fees and financing costs is structured in the City's ordinance; however, the Ninth Circuit Court has ruled that if the District Court finds that Lodi is a PRP, which Michael Donovan admitted to on February 28, it may not legislate for itself a litigation advantage by granting itself the right to collect attorney fees.
- What will you do with the money you get from USF&G (United States Fidelity & Guaranty Company)? Mr. Meyer recalled reading that the City believed it would get \$20 million from USF&G. He did not believe that the City would recover even a fraction of its attorney's fees because USF&G will allocate between defense and prosecution. It will not pay \$475 an hour (the City's cost for outside counsel) nor will it pay the City's 20% recovery. He asked whether money from USF&G would be used to fuel the litigation. He noted that the "burn rate" on this case is between \$500,000 to \$600,000 a month. He suggested that the City could continue to pay these costs, or use the money to negotiate with Lehman Brothers, or use it in the mediation process. Mr. Meyer stated that the City is becoming increasingly irrelevant to the cleanup in Lodi and noted that eight agencies are not deferring to the City. He believed that remedies and settlements are going to be reached with little or no City input and the City will have to confront its own cleanup responsibilities, all with much less money that it thought it would have.

Mr. Meyer advised Council to ask questions and if not satisfied with the answers it should seek a second opinion. He noted that the financing structures are extraordinarily complex, and through a compound interest rate of 25%, the opportunity for a resolution that will not financially cripple the City and business interests in the community will become increasingly out of reach. The City has been told that the cleanup will cost \$100 million. Mr. Meyer stated that this was not true and estimated the cost to be approximately \$30 million, which he noted the City has already spent. He stated that the groundwater contamination in Lodi is no different than any Valley town; however, no city is facing what Lodi is in terms of transaction cost.

Mayor Hitchcock asked City Attorney Hays if he received Judge Damrell's decision last Friday, to which he replied in the affirmative and stated that it had to do with a request of Lehman Brothers and did not involve the City. Ms. Hitchcock asked Mr. Hays to provide Council with a copy.

Council Member Land found it peculiar that insurance-paid attorneys would use this forum to speak on the matter and support one individual on the Council. Mr. Land objected to the implication that Council has not been open on this issue, and reported that Ms. Gualco had cancelled three appointments to meet with him. He asked why the insurance companies did not come forward nine years ago and offer to clean up the water contamination if, as Mr. Meyer estimated, it would cost only \$30 million.

Mr. Meyer replied that Lodi had a deal structured several years ago, in which the City would clean up the groundwater and the PRPs would clean up the soil. He stated that the insurance companies had offered to do it and the City rejected it.

Council Member Land objected to Mr. Meyer's comment, stating that it was untrue.

Mr. Meyer reported that the City has lost 45 out of the 50 motions it has filed. He cautioned that at various times in litigation it is important to assess one's position.

Mayor Hitchcock expressed hope that Council would consider obtaining a second opinion of this matter by another party.

City Manager Flynn found it ironic that attorneys from the other side have come forward to explain how the City can save money. He stated that it was the City's responsibility to go to the insurance companies first to pay for the clean up, rather than the ratepayers of Lodi.

Council Member Hansen asked the public to cautiously consider the underlying motives of Ms. Gualco and Mr. Meyer.

Mayor Hitchcock stated that she had been involved in this matter for four and a half years and recalled that Council was initially told it would be resolved much sooner. She explained that her opinion has been formed over time by looking objectively and being open. She attended mediation sessions at the request of a judge who felt that Council was not being fully informed. She encouraged Council to attend these meetings with an open mind. She reiterated her recommendation that a second opinion be sought and believed it would be a very worthwhile investment.

- Arthur Price recalled that 12 years ago he was a member of the committee to recall former Council Member Ray Davenport. He stated that Mr. Davenport attracted a crowd that was not interested in the future of Lodi. Council meetings degenerated into a cross between "a three-ring circus and a barroom brawl." He believed that Council meetings again are getting nearly as bad. One Council Member is attacking the motives and actions of the Mayor. The Lodi Council is now being compared to the Galt Council, which has been contentious over the years. Lodi's reputation is being tarnished by newspaper articles in The Record. He believed that Council makes proper decisions for the good of the City when it has the facts; however, he was not sure this was the case with staff. He recalled that the skate board park issue was "railroaded" through Council with only Ms. Hitchcock resisting the proposed location and asking whether Council had all the facts. Now Lodi has a \$350,000 "white elephant" at Kofu Park. He implied that City Manager Flynn conducts himself as though the City structure was analogous to the military. He pointed out that the chain of command runs from the citizens to the Council, who deliberate and direct staff how to proceed. The Council has a right, and a duty, to be fully informed before making a decision. He stated that if Council Member Land wants to "rubber stamp" the recommendations of staff it is his prerogative; however, he should not expect Mayor Hitchcock to do so. He asked Council Member Land to withdraw his (anticipated) request regarding the actions of the Mayor and get back to governing the City of Lodi.

Council Member Land explained that the Council is a collective body. When one Member goes against a vote of the Council it is unacceptable. He stated that he would do his best to make sure that the Lodi City Council is well represented. His goal related to the litigation is that nothing is leaked out from closed session meetings and that the water contamination is cleaned up for the residents of the City. He indicated that Mayor Hitchcock has been opposed to the litigation since its inception. If the litigation is lost, it will cost each ratepayer \$80 to \$100 a month for the next 20 years. The City's strategy is to protect the ratepayers of Lodi.

Mayor Hitchcock stated that Mr. Land's comment, that she was opposed to the litigation from the beginning, was untrue. She explained that when first elected to the Council, she listened and believed that the City's approach made sense. She was only opposed to borrowing \$15 million at an interest rate of over 20%.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider the appeal of G-REM regarding the Planning Commission's denial of the request to amend Resolution 03-12 adding a condition of approval to the Vintner's Square Shopping Center, located at the northwest corner of Lower Sacramento Road and Kettleman Lane.

Community Development Director Bartlam explained that this appeal was filed by the applicant of the Vintners Square Shopping Center, G-REM (Geweke Real Estate Management). G-REM had made a request to the Planning Commission to add a condition to the resolution the Commission approved in May for the approval of the project. The condition would read as follows:

That the project applicant shall cause a perpetual agricultural conservation easement to be imposed over not less than 22.39 acres of contiguous active agricultural acreage elsewhere within the Lodi AVA of San Joaquin County. These soils shall be permanently protected from future development via enforceable deed restrictions. Acreage between Lodi and Stockton shall be targeted. Soils and farming conditions shall be equivalent or superior to the project area. Protected acreage shall be set-aside within one year of the commencement of any construction activity within the development.

Mr. Bartlam stated that the applicant proposed this condition as a way of appeasing the opposition group that had formed against the project. The group had focused their attention on the loss of prime farmland for which the project site has been characterized. In deliberating the condition, the Planning Commission was uncomfortable with the fact that they might set precedence for future actions and believed that the policy decision was better left with the City Council. Consequently the Planning Commission denied the applicant's request, which is the basis for the appeal before Council. He noted that the opposition group was not satisfied with the language of the condition. Mr. Bartlam asked Council to support his original recommendation to the Planning Commission and add the condition, as written, to the resolution of approval to the Vintners Square Shopping Center.

Dale Gillespie introduced himself as an employee of G-REM. He stated that the subject of the request is not, from the perspective of the applicant, about agricultural land preservation. It is being brought forward on a voluntary basis in an effort to settle the concerns of the opposition to the project. Mr. Gillespie expressed his opinion that the Vintners Square property was no more prime agricultural land than the land under residential homes in the area. It has been designated as commercial shopping center land since 1991.

In reply to questions by Mayor Pro Tempore Howard, Mr. Gillespie explained that he had not yet targeted any particular piece of property. He intended on abiding by the language of the condition that states, "acreage between Lodi and Stockton would be targeted." He expressed confidence that G-REM could satisfy the condition within the one year time period that was stipulated.

Mayor Pro Tempore Howard asked whether Mr. Gillespie anticipated that the soil and farming conditions would be in an area that would otherwise be prime for development. She stated that if land is to be set aside for farming she would want to make sure it: 1) is in an area where it has a benefit to Lodi, 2) would be conducive to long term agricultural growth, and 3) in an area where it would prevent development in what would otherwise be a greenbelt. She also inquired if the area would have soil and farming conditions that would not only be superior to the project, but conducive to long term agricultural use, and if this is something that he would look for in the conditions of the property.

Mr. Gillespie answered in the affirmative to Ms. Howard's questions and added that he intended to abide by the spirit of the condition, as well as the actual written version of it. He expressed his opinion that Ms. Cerney's suggestion for the language in the condition to specifically create a boundary in which to locate the land was too restrictive and smaller than the recommended condition.

Mayor Pro Tempore Howard noted that a condition did not necessarily have to be approved, it could be agreed upon between two parties.

Mr. Gillespie replied that Ms. Cerney and her legal counsel requested that this be a condition approved by Council to further bind G-REM to live up to the condition.

Mayor Pro Tempore Howard pointed out that this would not be a policy making decision, as it would be specific to this particular project.

Mr. Gillespie agreed and hoped that it did not become a policy.

In response to Mayor Pro Tempore Howard, City Attorney Hays explained that if the City sought to establish a policy, and condition developments under that policy, there would have to be a nexus study so that it could be determined whether or not the condition met up to the Nollan-Dolan standards with regard to the ability to attach conditions to the development.

Mayor Pro Tempore Howard stated that generally when a landowner is obligated or under an easement to farm they have some privileges under the Williamson Act and asked if the seller would fall under those same privileges.

Community Development Director Bartlam believed that they would no longer need the Williamson Act to provide that protection. They would have lost the potential value of development so the property's true value would be for the farming that would be occurring on the property.

Mayor Hitchcock expressed her opinion that the California Environmental Quality Act (CEQA) requires mitigation of loss of prime farmland. The requested action should be done as mitigation, otherwise the opposition could prevail in the courts by stating that part of the CEQA law had not been mitigated and it would be difficult to approve the Environmental Impact Report (EIR).

Hearing Opened to the Public

- Diana Westmoreland Pedrozo introduced herself as the American Farmland Trust (AFT) Northern San Joaquin County Field Representative. She reported that the AFT is a national organization that has been in business for over 23 years. AFT's mission is to save land that sustains people by working with communities, farmers, and ranchers to protect the best land, plan for growth with agriculture in mind, and keep the land healthy. San Joaquin County has been identified by AFT as one of the most threatened regions in the state. AFT has also been working with the San Joaquin County Farm Bureau and local farmers and ranchers that have been exploring the formation of a local agricultural land trust. AFT's philosophy has been to encourage

and support local land trusts. They are currently working in the counties of San Joaquin, Yolo, Stanislaus, and Merced to identify and assist in voluntary conservation easement transactions that would assist local government to plan for agriculture while accommodating growth. AFT is a qualified easement holder and holds easements in San Joaquin County. Ms. Pedrozo offered AFT's assistance to the City and stated that she was pleased with G-REM's proposal. She noted that the City has other options such as having a fee that the developer could donate so that the City could leverage other available funding. The Department of Conservation California Farmland Conservancy Program usually asks for a 5% match. In addition there are some private foundations that give money for easements. The City could take money, leverage it, and use it to acquire more land.

In response to Council Member Hansen, Ms. Pedrozo explained that the key element in preserving agricultural land is that it needs to be community and landowner supported. Landowners are fearful when certain areas are designated as no growth. Having an interested and committed community not only in policy, but in dollars, makes landowners more apt to come forward. AFT is available for outreach to communities to provide information to understand how easements work. She reminded Council that growth can also be "up" with higher densities and in this way it would preserve more prime agricultural land. She believed the Central Valley to be a national treasure, as it has the best land that grows food for the world.

- Kathy Grant stated that the way the 24 acre Lowe's site is developed, most of the storm water will be lost. She suggested that they use a low impact development design to help retain water. She asked Council to create an Open Space Commission.

Council Member Beckman commented that he currently serves on four water commissions and has been working with the Public Works Department to try and find ways to save water on pavement.

Mr. Bartlam explained that two acres of landscape on the project is devoted to on site interim collection areas in the landscape that will flush the storm water. The project also includes a basin to accumulate storm water before it heads to the City's standard basin program. The project's development impact fees will help fund the Westside Facility Plan for the linear basin lagoon concept, which can ultimately be a type of wetland operation.

- Barbara Williams introduced herself as the Sierra Club's Conservation Chair of the Delta Sierra Group and thanked G-REM for the mitigation offer. She reported that she serves on the San Joaquin County Agricultural Technical Advisory Group that is working on a draft mitigation ordinance for farmland conversion.
- Osha Meserve, attorney with the Remy, Thomas, Moose, and Manley law firm in Sacramento, stated that she represented Ann Cerney and Citizens for Open Government. She noted that, generally, they were supportive of G-REM's proposal. She believed that the language suggested by the American Farmland Trust was a superior idea, i.e., to ask that the same amount of money that would be spent by the applicant on the land be given over to the City so it could be leveraged to purchase additional acreage. She urged Council to look carefully at the proposal and add the provision, or at a minimum, the flexibility for the provision, to the applicant's request. She stated that the obligation to mitigate for farmland loss was a CEQA obligation and is required under law. She believed that if the City adopted the condition on the project it would set a policy precedent. When prime farmland is taken up by development it needs to be offset by protecting other land so there can be a greenbelt around every city that has the ability to do so. She reiterated her recommendation to Council to modify the request in order to allow what Ms. Pedrozo outlined, so that the money that the applicant spends can be leveraged for far greater gain toward preserving a greenbelt.

- Boyce Gire believed that most people want productive land to be protected and they also want the conveniences and benefits that growth provides to a community. He urged Council to approve G-REM's proposal.
- Kathryn Inman stated that she represented fourth generation Lodi residents. She recalled that in the 1930s, Lodi purchased land for a dam on the Mokelumne River to ensure there would be adequate water for the City. Also at that time acreage was purchased for a wastewater facility. A few years after money was appropriated and the land was secured for the dam site, the City Council decided it was not needed and sold it. In the early 1950s, farmers had to change their wells because the water table had receded so much. Her grandfather had told her that she would live to see Lodi and Stockton become one, which she was now concerned about. She asked whether the exchange of land for this development would be an equal quality of land and if there would be water available in close proximity. She noted that the Woodbridge Irrigation District supplies water to the project site property. She urged Council to work with the AFT organization.

Mayor Pro Tempore Howard explained that the land has not yet been selected that will be set aside. She reiterated her hope that whatever land is purchased, it will be a piece of property that otherwise would be immediately chosen for development and it would have soil rich enough to sustain agriculture for many years. She read the following statement from the applicant's request, "Soils and farming conditions shall be equivalent or superior to the project area."

- John Eilers representing the Land Utilization Trust stated that it is the only operating local land trust in San Joaquin County and it could handle this easement. He stated that Council should also consider that there be a cash endowment because if a trust is going to handle this, there has to be inspection of the site and the ability to deal with litigation if people do not abide by it. He stated that collecting fees is problematic due to administration issues. He encouraged Council to accept G-REM's proposal.
- John Donovan stated that people would not object as much to Lowe's and Super Wal-Mart if there was progress made in preserving land. He urged Council to approve G-REM's proposal.

Public Portion of Hearing Closed

In response to Mayor Hitchcock, Mr. Bartlam explained that the notion of an endowment is wholly dependent upon who ultimately holds the easement. In order for Mr. Gillespie to find a qualified holder of the easement he may have to pay an endowment; however, there may be an organization that will not require it. He noted that the language of the condition is clear, "cause the easement to happen."

Council Member Land encouraged all those who spoke tonight to take their message to the Stockton City Council. He felt that Lodi and Stockton must work together to preserve the farmland between the cities.

MOTION:

Council Member Land made a motion, Beckman second, to adopt Resolution No. 2003-115 reversing the Planning Commission's action and approving the added condition of approval below to Planning Commission Resolution No. 03-12 for property located at the northwest corner of Kettleman Lane and Lower Sacramento Road:

The project applicant shall cause a perpetual agricultural conservation easement to be imposed over not less than 22.39 acres of contiguous active agricultural acreage elsewhere within the Lodi AVA of San Joaquin County. These soils shall be permanently protected from future development via enforceable deed restrictions. Acreage between Lodi and Stockton shall be targeted. Soils and farming conditions shall be equivalent or superior to the project area. Protected acreage shall be set aside within one year of the commencement of any construction activity within the development.

DISCUSSION:

In answer to Council Member Hansen, Mr. Bartlam stated that Ms. Meserve's statement was incorrect, i.e., that G-REM's proposal was not voluntary because CEQA requires mitigation.

Council Member Beckman was in favor of giving developers discretion regarding the issues of trusts, cash endowments, land exchanges, cash amounts for offsetting other land, etc. He reported that he was the lone Planning Commissioner who supported the Lowe's project when it was brought before them on September 12, 2002.

Mayor Pro Tempore Howard emphasized the importance of differentiating between something that is voluntary and gives discretion to the developer, versus policy setting.

City Attorney Hays noted that staff did not want to get in the middle of dueling trusts, etc., and preferred that the developer handle these issues. He explained that what is being done by this action is for the City to accept voluntary agricultural easements. The developer is required to acquire development rights to land, which is different than buying land.

Mayor Hitchcock liked the idea of an Open Space and Farmland Preservation Task Force, as Ms. Grant had suggested, and recommended that it be brought back for Council's consideration.

VOTE:

The above motion carried by a unanimous vote.

RECESS

At 9:53 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 10:07 p.m.

G. PUBLIC HEARINGS (Continued)

G-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider the appeal of Ann M. Cerney and Citizens for Open Government regarding the Planning Commission's approval of the request of Jim Manion, on behalf of Lowe's, to certify a Final Environmental Impact Report for the Vintner's Square Shopping Center pursuant to the California Environmental Quality Act.

Community Development Director Bartlam reported that the Planning Commission held a public hearing on May 14 to consider the applicant's request for approval of the shopping center project and final Environmental Impact Report (EIR). Subsequent to that approval, Ann Cerney and Citizens for Open Government filed the appeal to the Council on what they felt was an inadequate environmental document. Other than the loss of prime farmland, which was noted at the public hearing on May 14, he was unclear as to what other issues the appellants have.

Osha Meserve, attorney with the law firm of Remy, Thomas, Moose, and Manley stated that she represented Ann Cerney and Citizens for Open Government, which are pursuing the appeal under the California Environmental Quality Act (CEQA). She noted that under CEQA every citizen has the responsibility to contribute to the preservation and enhancement of the environment. The appellants are holding the City accountable for providing adequate disclosure and mitigation regarding the projects it approves. As a lead agency, under CEQA the City has certain duties that cannot be delegated to the developers, when the developers want to volunteer to comply. She stated that the Environmental Impact Report (EIR) prepared for the Vintners Square commercial project is inadequate. In certain comments the appellants had highlighted the agricultural issue and that was one of the reasons that Ms. Cerney and Citizens for Open Government felt that the

EIR was inadequate; however, the appeal is based on all aspects of the EIR being inadequate. She referred Council to comments on the draft EIR and written and oral comments submitted at the Planning Commission meeting on May 14. She highlighted some of those concerns as follows:

- The EIR presented the proposed project as a project that included a great deal more commercial space. When it was originally proposed to the Planning Commission it included a WinCo store. Before the EIR was released, WinCo pulled out of the project, and therefore the EIR presented a different proposed project than what is now being planned. This skewed the rest of the analysis and misled the public, in violation of CEQA.
- The mitigation for the air quality impact is still inadequate. The staff report notes that Ms. Cerney expressed gratitude that certain mitigation measures suggested in her letter were adopted. Ms. Meserve stated that this was not a favor of the City; it had a duty under CEQA to adopt all feasible mitigation measures. In the comments on the draft EIR, Ms. Cerney suggested several mitigation measures for air quality. Not all of them were adopted and the responses to comments did not explain why the ones that were not adopted, were specifically not feasible, as required by CEQA.
- The appellants still believe that the cumulative impacts analysis should have included some kind of development occurring in what used to be the Vintners Square residential portion of the property to the north. The City's planning staff is aware that the applicant intends to develop that at some point. For it to claim that there is no such project, then the responses to comments is totally inadequate and misleading. If the City felt that it probably would be developed, it needed to include that in air quality and traffic, and any type of impacts that would be affected by development. At the Planning Commission meeting there was discussion about the fact that eventually residential development would be there and routes for loading and unloading things into Lowe's might create noise problems for future residents. The City should have considered that in the EIR.
- Despite what the City Council has done tonight by adopting GREMS proposal to provide some mitigation for the loss of prime farmland, the EIR incorrectly concludes that there is no mitigation for the loss of farmland. Ms. Meserve stated that regardless of the condition adopted tonight it does not make the CEQA document or findings adequate.
- In reference to the project description, Ms. Meserve stated that because the project as proposed was not the project that the applicant or City thought would be built or approved, the alternatives developed in the EIR were off base. The purpose of alternatives is to mitigate significant impacts of the project. In this project there were two significant project level impacts due to air, one cumulative air quality impact, and a farmland conversion significant impact. The "no project" alternative is required under CEQA. Alternative three involved putting local stores in. All the impacts disclosed in the EIR were the same. Alternative four was an alternate location and all of the impacts of that were reported to be the same. Ms. Meserve stated that the purpose of the alternatives analysis was totally lost in this EIR because none of the alternatives except for alternative two, the proposed project, reduced impacts.
- Referencing the cumulative development issues in the area, Ms. Meserve stated that the traffic impacts were insufficiently analyzed and mitigated. Cultural and biological impacts were also insufficiently mitigated. The staff report mentions that the project is consistent with each and every general plan element, which Ms. Meserve pointed out was required by law, not a special accommodation by this project.
- The findings are unsupported by substantial evidence in the record because of the inadequacy of the document.

Ms. Meserve stated that because of these deficiencies and others which were noted in the appellant's previous communications with the City, the Planning Commission decision to certify the EIR is being appealed. She asked that Council reverse the Planning Commission's decision.

Council Member Beckman asked whether Ms. Meserve believed that all the aspects of EIR were inadequate.

Ms. Meserve reiterated that she believed all of the aspects she mentioned here tonight and referenced in previous communications with the City were inadequate.

Mayor Hitchcock expressed concern with the adequacy of the EIR, especially with regard to the mitigation of farmland.

Mr. Bartlam stated that he wholly disagreed with nearly everything Ms. Meserve said. He reported that a response was provided to all of the comments she mentioned and are contained in the final EIR on pages 2-51 through 2-63. Staff is not suggesting mitigation of prime farmland, and consequently the City is not delegating anything, as Ms. Meserve indicated. Mr. Bartlam stated that he was on record in the EIR and in the minutes of the Planning Commission as saying that he did not believe prime farmland could be mitigated, and therefore a statement of overriding consideration is being adopted. He explained that the only way to lessen the impact would be to use less land. The alternative that the Planning Commission adopted reduced the impact by virtue of reducing the size of the project. Due to the prior action, the applicant cannot decide voluntarily whether he will do it or not because it is a new condition of the project. It has not been "delegated"; it has been "required". Mr. Bartlam explained that it is not possible to mitigate the loss of prime farmland because it is impossible to create more of it. The appropriate finding is to adopt the statement of overriding consideration, which in essence states that it is acknowledged that this is a loss of prime farmland and it cannot be taken back. He recommended that Council overturn Ms. Cerney's appeal and support the Planning Commission's certification of the document.

In reply to Mayor Hitchcock, City Attorney Hays stated that there was nothing that could be done to prevent the appellants from filing a lawsuit if they chose to. He stated that CEQA provides for the opportunity to make an overriding consideration. He agreed with Mr. Bartlam that the loss of farmland cannot be mitigated. Mitigation implies that something is being created, and prime farmland cannot be created. Preserving it elsewhere is not mitigation because it only keeps what is already in existence.

In answer to Mayor Hitchcock, Council Member Beckman believed that the earlier action to accept G-REM's proposal was a mitigation because it amended the EIR.

In response to Council Member Hansen, Mr. Bartlam reported that WinCo was 25% of the project's total square footage. The draft EIR was already in preparation when they chose to leave the project and under CEQA it is lawful to continue with the project description. The project described in the EIR is larger than the one adopted by the Planning Commission. The Planning Commission adopted an alternative which was identified specifically within the EIR and those impacts were addressed.

Council Member Hansen asked if more homes would be built around the project because WinCo pulled out.

Mr. Bartlam replied that there probably would be more homes built; however, staff does not have an application for residential development on the balance of the property.

Mr. Gillespie recalled that this project began in 1991 with the Planning Commission and City Council's adoption of the current general plan. Annexation was applied for in 1994. G-REM was asked to hold its annexation request while the City determined the best course of action for revitalization of the downtown area. In 1996 the City requested that G-REM proceed with the annexation. He explained that there was an expiring sales tax agreement with the County, and the City wanted to get the future shopping center property (as well as

the property to the south) in the City before the agreement expired. An environmental document was prepared for that annexation and certified by the Planning Commission and Council. G-REM participated in the study and adoption of the West Side Facilities Master Plan, which formed the framework for the streets and utilities. The storm drainage not only included a study of the proposed shopping center site property, but the entire western quadrant of the City west of Lower Sacramento Road. An environmental document was prepared for the West Side Facilities Master Plan, circulated, and certified by the Planning Commission and Council. He recalled that the public meetings were sparsely attended. There was no opposition to the west side area planning, or the shopping center concept. Lowe's and WinCo Foods were found as an anchor for the shopping center. In September 2002 a public hearing was held by the Planning Commission to certify what was then a mitigated negative declaration, and approve a use permit for the shopping center. There was considerable opposition at the hearing, primarily from competing grocers, their legal counsel, and counsel representing the retail clerks union, in addition to Ms. Cerney and Citizens for Open Government. While the EIR was being prepared, in response to pressure placed on G-REM including threats of litigation by the competing grocers and the retail clerks union, G-REM found an out to release itself from a purchase agreement with WinCo Foods and took the opportunity to exercise it. As a result, G-REM was able to entirely redesign the shopping center, as well as decrease the size to lessen impacts. He found Ms. Meserve's comments regarding the project description ironic, because if it were inaccurate it would be to the benefit of the community. He explained that because it reflected the impacts caused by a 96,000 square foot grocery store which was no longer part of the project, it grossly overstated impacts such as noise, air quality, traffic, etc. Virtually every impact in the EIR was significantly lessened by the redesign of the project. The decision to remove WinCo from the project amounted to \$6 million and potentially 150 new jobs.

Mr. Gillespie stated that in response to Ms. Cerney's environmental concerns, G-REM reduced the size of the shopping center to reflect the loss of WinCo. Based on concerns by some of the Planning Commissioners, G-REM redesigned and reconfigured the shopping center by orienting the Lowe's anchor store in a different direction to create a more attractive window, and also eliminated two of the three fast food pads. In May 2003 the project and its completed EIR were approved and certified by the Planning Commission, which has since been appealed by Ms. Cerney. It became clear that her primary concern was the loss of prime farmland, which is why G-REM offered the one-to-one mitigation. G-REM has made every effort to deliver a quality project to the community of Lodi. In reference to concerns about storm water runoff, Mr. Gillespie explained that the basin they are incorporating, as well as the bio soils, offer some percolation qualities. He asked Council to deny Ms. Cerney's appeal.

Mayor Hitchcock believed that it would be better to state up front that the condition to the project is mitigation to the loss of prime farmland.

Mr. Gillespie replied that he agreed with Mr. Bartlam's earlier statement that there is no mitigation possible for the loss of prime farmland.

City Attorney Hays warned that if Council decided to require, as an element of the EIR, that development that uses prime farmland needed a mitigation measure, it would have established a de facto policy without having considered whether it is appropriate for all development.

Council Member Beckman added that if Council were to declare that all prime farmland needed to be mitigated there would be no ability for any future development to occur because there is no way to create new prime farmland.

Mr. Bartlam explained that Council has three options under CEQA once it has been determined to be a significant impact: 1) mitigate it to less than significant impact, 2) adopt a statement of overriding consideration, or 3) deny the project. Staff is suggesting that Council adopt a statement of overriding consideration. Essentially it means that it is recognized that a significant impact exists, and it cannot be mitigated to a less than significant impact, but there are other values of the project that override the impact.

Council Member Beckman stated that he did not believe G-REM's condition on the project mitigates the loss of prime farmland because new farmland is not being created; however it does help the overall agricultural community in the long run.

Mr. Bartlam reported that there are other statements of overriding consideration such as cumulative air quality. The basin is in a non-attainment area and it cannot be mitigated to a less than significant impact.

Council Member Hansen recalled that most of the people he had spoken to about the Lowe's project were in favor of it. He stated that the term "overriding considerations", which he is basing his vote on, provides a service in Lodi that people want, provides jobs, and a tax base that allows the City to provide services and facilities.

Pat Patrick, President and Chief Executive Office of the Lodi Chamber of Commerce, read the following statement on behalf of the Chamber:

The Lodi Chamber of Commerce is in support of the development proposal before you this evening of Vintners Square. We the board of directors representing 710 businesses feel this is the next best step in the development of this strategic property. We believe that the City's requirements have been met and the developer and prospective tenants will add to the quality of life we enjoy in Lodi. Job creation, tax revenues, and the addition of more diverse retail will only benefit the City and the citizenry. Therefore we urge you to vote in favor of the Vintners Square project, moving it forward on to its beneficial conclusion.

Mr. Patrick strongly urged Council to support the Vintners Square Shopping Center project. He warned Council that there is a danger in what a small vocal minority can cause to happen in a City. He stated that the Chamber is interested in preserving the greenbelt. Several months ago it convened a meeting of City leaders, developers, agricultural and County representatives to discuss the issue. He criticized Ms. Meserve for speaking against G-REM, who he believed was a great asset and contributor to the community.

Mayor Hitchcock reminded Mr. Patrick that Ms. Cerney, who Ms. Meserve represents, has been a long time resident of Lodi. Ms. Hitchcock stated that she was not convinced that there is no mitigation possible for the loss of prime farmland. She believed that Mr. Gillespie's condition on the project is an offer of mitigation.

Mr. Hays disagreed, stating that Mr. Gillespie has offered to have a condition placed on the development, which is entirely different than mitigation in an EIR.

Hearing Opened to the Public

- Kathy Grant asked whether the project would look any different now that less of the property is being used, to which Mr. Bartlam replied that it will look like what the Planning Commission approved on May 14.
- Ann Cerney referred Mr. Hays and Council Member Beckman to CEQA guideline 15091, which sets out the standard for how statements of overriding consideration take place. She noted that the EIR was underway, but not released when WinCo pulled out of the project and stated that the EIR must be about the proposed project. She strongly believed there was an ability to mitigate cumulative agricultural impacts and conditions causing the loss of agricultural land.

In response to Council Member Land's inquiries regarding Citizens for Open Government, Ms. Cerney reported that it is an unincorporated association and there are a number of people who are members. She clarified that there has never been a specific rejection of this particular project. Concerns are related to CEQA and the openness that is encouraged by the public. When the project came forward in September comments from City staff were that "it was a done deal" and the public need not appear.

- Art Raab expressed concern about staff's definitions of "mitigation" and "create new farmland" that have been promulgated this evening. He believed that mitigation meant to lessen now or in the future. He believed that the condition placed on the project at the request of G-REM was mitigation. Setting aside development rights on land means that it will never be opened up for development, which is saving farmland.

Mr. Bartlam explained that project mitigation is mitigating impacts that the project is creating, not mitigating some impact in the future of some other piece of land. There would be a nexus problem if this matter were treated as Mr. Raab suggested, as it would be creating a mitigation for some other project that is not yet known.

- John Donovan believed that the value of productive farmland would significantly increase over the years because of the necessity to feed a growing world population. He stated that citizens concern was raised when the Lodi News Sentinel reported staff as saying the project was "a done deal". The message from staff was that citizens should have gotten involved four or five years ago. He commented that citizens care and have a legitimate interest in what happens in the community. He asked what is being done to develop a greenbelt.

Council Member Hansen replied that the Council would do as much as it individually can to preserve land and wants to provide as much of a greenbelt as possible.

Mayor Pro Tempore Howard recalled during initial discussions having expressed thoughts that she felt there was appropriate zoning. She felt then, and does now, that the land and the location is appropriate for the project. The zoning decision was made many years ago and is now being implemented.

Public Portion of Hearing Closed

Mayor Pro Tempore Howard provided the following information from the EIR summary of responses:

- Page 2-5 – CEQA expressly recognizes that a project may change between the original proposal and project approval. Indeed this is an important part of the CEQA process where the project revisions result in reduced environmental impact. The original project description is broader than the alternative project for which the applicant now seeks approval. The project revisions have occurred, in part, in response to planning and environmental concerns raised during the lengthy public process. These changes have been known to the public since at least January 2003. Also the revised project as studied is one of the alternatives in the EIR. In other words, it has been before the decision makers and public throughout this entire process. This revised project is only different in one respect, WinCo Food has been eliminated. Otherwise the original project remains. In sum, all impacts of both the original project and revised project have been analyzed in the EIR.
- Page 3-1 – Confirms what steps can be done to have some type of mitigations regarding air quality, but ultimately we are in a non-attainment area and fall under the San Joaquin County Valley Air Pollution Control District.

MOTION:

Mayor Pro Tempore Howard made a motion, Beckman second, to adopt Resolution No. 2003-116 affirming the Planning Commission's certification of the Final Environmental Impact Report for the Vintner's Square Shopping Center pursuant to the California Environmental Quality Act.

DISCUSSION:

Mayor Hitchcock stated that she would be voting against the motion, although it had nothing to do with the project itself. She expressed concern that the EIR was not adequate. She did not believe that developing an overriding consideration on the mitigation of prime farmland would hold up in court if the proponents decided to file suit. If G-REM's project condition could be considered as mitigation, she could vote in favor of the motion in good conscience.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land

Noes: Council Members – Mayor Hitchcock

Absent: Council Members – None

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

Mayor Hitchcock made a motion to continue with the remainder of the meeting past the 11:00 p.m. hour. The motion **died** for lack of a second.

Further, the City Council, on motion of Council Member Land, Hitchcock second, unanimously voted to continue with Items H, I-2, I-3, I-5, and J-1 following the 11:00 p.m. hour and to continue the remainder of the meeting to July 16, 2003.

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Beckman, Hansen second, unanimously made the following appointments/reappointments to various boards and commissions:

Greater Lodi Area Youth Commission (Adult Advisors)

Samir Berbawy Term to expire August 30, 2006

Dale Jones Term to expire August 30, 2006

Bradley VanderHamm Term to expire August 30, 2006

Library Board of Trustees

Christine Lavond Term to expire June 30, 2006

Tariq Din Term to expire June 30, 2006

Planning Commission

Randall Heinitz Term to expire June 30, 2007

Gina Moran Term to expire June 30, 2007

San Joaquin County Commission on Aging

Terri Whitmire Term to expire June 30, 2006

H-4 Miscellaneous

- a) City Clerk Blackston presented the cumulative Monthly Protocol Account report through June 30, 2003.

I. REGULAR CALENDAR

- I-1 "State Budget update" was ***continued to the regular meeting of July 16, due to the above vote.***

- I-2 "Adopt resolution awarding contract for Kettleman Lane Median Improvements, Hutchins Street to School Street to Clayborn Contracting Group, Inc., of Auburn (\$129,060), and appropriate funds"

Public Works Director Prima reported that the City previously received a grant from Caltrans to install a safety median on Highway 12 between Hutchins and School Streets. Staff has received some opposition from the Euclid Shopping Center as it believes there should be a median opening between Pleasant Avenue and Lee Street. Caltrans disagreed to this request. Mr. Prima noted that the project includes left-turn access at Church Street into the shopping center. Staff feels the shopping center would be adequately served with the proposed project and that the accidents on Kettleman Lane warrant that it be done.

In reply to Mayor Pro Tempore Howard, Mr. Prima clarified that the \$129,000 does include the cost for a traffic signal interconnect system, which connects signals at Church and Hutchins Streets.

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Hansen second, unanimously adopted Resolution No. 2003-117 awarding the contract for Kettleman Lane Median Improvements, Hutchins Street to School Street, to Clayborn Contracting Group, Inc., of Auburn, in the amount of \$129,060, and appropriated funds in accordance with staff recommendation.

- I-3 "Adopt resolution authorizing the Public Works Director to cast ballots representing City-owned properties in favor of the North San Joaquin Water Conservation District acreage charge (\$200)"

Public Works Director Prima explained that the North San Joaquin Water Conservation District (NSJWCD) has been struggling for years to develop water supplies and groundwater recharge type projects. It hopes to capture peak flows on the Mokelumne River. NSJWCD worked with Senator Machado last year to pass a bill allowing it to go to the voters for an acreage charge to help it fund water recharge projects. The legislation allowed up to \$5 per acre if NSJWCD can substantially do groundwater recharge. Staff supports City participation of \$200 a year, which will be deducted from the Water Fund.

Council Member Beckman corrected Mr. Prima, noting that it was Assemblyman Pescetti not Senator Machado.

Mayor Pro Tempore Howard announced that there would be a hearing regarding this matter on July 17 at Hutchins Street Square. After speaking with Deputy City Manager Keeter and Mr. Prima she learned that examples of City-owned property, which will incur the fee, include City Hall, Hale Park, and Lawrence Park. She read the following for clarification purposes, "No charge is automatic. The District Board may adopt the charge each year at a public meeting when the amount of water deposited during the previous year will be certified and a budget for expenditure of acreage charge revenue will be adopted."

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Howard, Beckman second, unanimously adopted Resolution No. 2003-118 authorizing the Public Works Director to cast ballots representing City-owned properties supporting the proposed North San Joaquin Water Conservation District acreage charge on land within the district, on which surface water or groundwater is applied (\$200).

- I-4 "Adopt resolution authorizing reallocation from 2002-03 unencumbered funds for the purchase of notebook computers (up to five at \$1,900 each)" was ***continued to the regular meeting of July 16, due to the above vote.***
- I-5 "Adopt resolution authorizing the City Manager to execute an amendment to the Memorandum of Understanding between the City of Lodi and various Railroads approved by Council on September 18, 2002"

Public Works Director Prima recalled that last year the City approved the Memorandum of Understanding (MOU) with the three railroads involved in this project, which allowed the City to pave over the tracks on Lodi Avenue. The project at that time was to remove the Central California Traction (CCT) tracks east of the City extending into Lodi Avenue and connecting to the mainline Union Pacific Railroad (UP) tracks. The old unused Kentucky House Branch tracks, which run along Lockeford Street, would be reactivated to serve as the connection between the mainline UP tracks and the CCT tracks. That also entailed developing an interchange yard along the UP tracks north of Lockeford Street. The cost of that project was estimated at \$7 million. The funding was to be obtained from Measure K, with design costs of nearly \$500,000 to be paid by the City.

Mr. Prima reported that the MOU includes a provision for an alternative that meets the goals of the project. The railroads have asked that the City consider an alternative, which will still allow it to abandon the tracks on Lodi Avenue, and possibly rebuild the CCT tracks between Stockton and Lodi and not reactivate the tracks along Lockeford Street. Staff previously addressed this with Council and received direction to negotiate with the railroads. The railroads asked that the cost savings in design that the City was going to bear under the old MOU, be applied to the construction of rebuilding the CCT tracks, which it believed would cost more than \$7 million. Staff agreed to split the cost. The amendment to the MOU would save the City \$200,000 in design costs.

In reply to Mayor Hitchcock, Mr. Prima explained that following approval of the MOU amendment, staff will approach the San Joaquin Council of Governments. He confirmed that the railroads are willing to accept the funding arrangement and that the City's contribution is capped.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Howard, Beckman second, unanimously adopted Resolution No. 2003-119 authorizing the City Manager to execute an amendment to the MOU between the City of Lodi and UP, Burlington Northern and Santa Fe Railway Company, and CCT approved by Council on September 18, 2002.

- I-6 "Approve design concept for Lockeford Street Storm Drainage Improvements" was ***continued to the regular meeting of July 16, due to the above vote.***
- I-7 "Adopt resolution approving plans and specifications, authorizing advertisement for bids, pending Caltrans approval, for Kettleman Lane Widening/Gap Closure Project from Lower Sacramento Road to Ham Lane, and Stockton Street to Cherokee Lane, and authorizing the City Manager to execute all necessary agreements to implement the project" was ***continued to the regular meeting of July 16, due to the above vote.***

- I-8 "Adopt resolution authorizing the purchase of Websmart Development Tools from Business Computer Design International, Inc., of Hinsdale, Ill (\$22,650)" was ***continued to the regular meeting of July 16, due to the above vote.***

J. ORDINANCES

- J-1 Ordinance No. 1731 entitled, "An Ordinance of the Lodi City Council Amending the Official District Map of the City of Lodi and Thereby Rezoning the Parcels Located at 13669 North Cherokee Lane; 4071, 4145, and 4219 East Harney Lane; and 1443 East Harney Lane (APN 062-290-14, 17, 37, and 38 and APN 058-230-17) from San Joaquin County RL, Residential Low Density and AU-20 Agriculture Urban Reserve to R-2, Single Family Residential" having been introduced at a regular meeting of the Lodi City Council held May 21, 2003, was brought up for passage on motion of Council Member Beckman, Howard second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:
- Ayes: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – None

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Hansen thanked Public Works Director Prima for trying to find an alternative for the Kettleman Lane widening project.
- Mayor Pro Tempore Howard announced the names of the recipients of the Stockton Ag Expo Agribusiness Scholarship Program and offered her congratulations to: Jeanette Beeman, Tara Tecklenburg, and Christina Harper.
- Council Member Land apologized to Council, staff, and the citizens of Lodi for the request he would be making tonight. Mr. Land stated that he and other Council Members have given Mayor Hitchcock several opportunities to reform, which she has disregarded. It is now time for Council to take corrective action. He noted that on the eve of celebrating the 227th year as a nation and embracing the democratic process, which is based on majority rule, there is one Member who does not believe in the democratic process. He made the analogy that Council has charted its course and set its sails, but there is one aboard who has declared mutiny. After presenting the facts and evidence to the Council, he believed that the question would be begged as to whether this required a Grand Jury investigation.

Council Member Land made a motion to schedule a Special City Council meeting on July 23, 2003, at 7:00 p.m. to consider censure of Mayor Hitchcock and reorganization of the City Council.

Council Member Beckman received confirmation from the City Attorney that by voting in favor of the motion it would not necessarily mean that the Council would reorganize; the matter would be discussed and reorganization would take place only if voted on to do so. Council Member Beckman seconded the motion.

Mayor Hitchcock felt that it would be more appropriate to discuss the matter at a regularly scheduled City Council meeting, to which Mr. Land agreed, under the condition that the two topics be placed at the beginning of the regular calendar.

City Attorney Hays read Lodi Municipal Code Section 2.04.050.

Council Member Hansen announced that he would be on vacation July 23.

Mayor Hitchcock asked Mr. Land to consider the totality of the impact of what he was requesting in terms of the City, Council, and a working relationship, as well as respecting that people can have different views.

Council Member Land replied that Members are all entitled to their opinions, but the decisions of Council need to be carried as one voice.

Mayor Hitchcock stated that expecting her to change her ideas, opinions, and comments to coincide with a vote she disagrees with, is contrary to the concept of free speech and being able to have dissenting opinions.

Council Member Land responded that it is imperative to represent the Council when entering into mediation after Council has taken a vote. He asserted that he could not stand by and watch the litigation deteriorate, which has been worked on for over eight years. Mr. Land explained that he was merely asking that when Ms. Hitchcock attends mediation sessions, that she listen, observe, and report back to the Council as a body. He believed that to do anything other than expressing the majority opinion of the Council would be unethical. Mr. Land stated that he would drop this matter if he could get Ms. Hitchcock to represent the City and Council on the decisions it has made and voted on.

- Mayor Hitchcock announced that a representative from Senator Poochigian's office would be at the Carnegie Forum tomorrow from 1:00 to 4:30 p.m.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn made the following announcements:
 - Today is Alan Vallow's birthday;
 - Yesterday was the eighth wedding anniversary of Jerry Glenn and Susan Hitchcock;
 - The Celebrate America event will be held tomorrow; and
 - The Oooh Ahhh Festival will be held on July 4th.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 12:20 a.m., Thursday, July 3, 2003, in memory of Jillian Marie Albert (daughter of Dr. Erik and Julie Albert) who passed away last week at the age of 21.

ATTEST:

Susan J. Blackston
City Clerk